ruling that the deed was void as to her inchoate right of dower the court said: "Even if the appellant's contentions were sustained and the deed should be set aside and the title reinvested in her husband, we do not see how it could be kept in him without enjoining him from future transfers of it" in order to protect her rights to alimony, separate maintenance, and the like. "It would be absurd to ask a court of equity, at the suit of a wife, to enjoin her husband from mortgaging or selling his real estate, on the ground that the wife might in some possible contingency want to file a bill for separate maintenance and for alimony against him and that the land would be required to satisfy the decree."

While the authorities expressly in point are few,[6] yet they agree with the principal case upon the ground that dower is a vested, though inchoate right arising immediately upon the marriage, and in the main not to be precluded except by her act or with her consent; whereas the rights to alimony or separate maintenance are highly contingent and problematic, dependent first upon a violation of the marital relations by the husband, and finally upon obtaining a judicial decree allowing the same, and to defeat which many things may arise.

However, where those rights are no longer contingent but have been ascertained before the bringing of the bill to set aside such voluntary conveyances in fraud of marital rights, equity in granting the bill will also provide for the protection of them in addition to dower.[7]

J. C. A.

EMPLOYERS' LIABILITY ACT—WHEN SUIT MUST BE BROUGHT —An employer's liability has always been a fruitful source of discussion and has been productive of a vast amount of legislation, judicial as well as otherwise. The North Carolina courts have added a new twist to the federal Employers' Liability Act [1] by their interpretation of the section [2] limiting the time within which an action must be brought. In *Burnett* v. *Atlantic Coast Line R. Co.*[3] the court held that though this section of the act says, "that no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued," nevertheless since the law "confers no new right and is operative only to with-

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[6] American cases cited in the notes above.

[7] Decree for separate maintenance granted, Fahey v. Fahey, 43 Colo. 354 (1908); and decree of divorce and alimony already granted, Goff v. Goff, 60 W. Va. 9 (1906).

[1] Act April 22, 1908, c. 149, 35 Stat. 65. [U. S. Comp. St. Supp. 1911, p. 1322.]

[2] §6.

[3] 79 S. E. Rep. 414 (N. C. 1913).

draw from the company a defense theretofore existing," the clause was merely one of limitation and therefore unless specially pleaded would not be a bar to the action. Aside from the question as to whether the act does confer any new right or not which is, to say the least a doubtful question, the decision would seem to be an extreme one.

The case admits, what is practically universal law, that where a new right not known to the common law is created by a statute, a clause limiting the time of enforcing the right is a condition precedent to its enforcement—*i. e.*, the right ceases with the expiration of that period.[4] And the court then argues that since no new right is created, the cases laying down this rule do not apply. These decisions do not say, however, that the creation of a new *right* is the only reason for their holding, but merely that it is a sufficient reason. And if we consider the basic and underlying principle it will be found to be as equally applicable to the principal case as the others, for though Congress in passing the act may not have conferred any new *right,* they have at least created certain privileges or benefits, otherwise no one would sue under the act but would merely stand on their common law rights. And that they have created something is admitted by the case which says that the act "was designed to make it easier for employees to recover damages caused by negligence." It is then ridiculous to say that a legislature which could create a new right and limit it to a certain period, could not limit this lesser benefit or privilege, and that one seeking to take advantage of the benefit would not be bound by the limitation. This is practically the view taken by the Scottish courts, who in enforcing their Employers' Liability Act hold that the limitation is for the protection of the defendants just as the operative part of the act is for the protection of the plaintiffs and should be enforced just as strictly.[5]

The principal case, in the opinion cites *Upton* v. *McLaughlin,*[6] in which the following statute[7] was held to be a statute of limitation: "No suit in law or equity shall be maintainable in any court, between an assignee in bankruptcy and a person claiming an adverse interest, touching any property or rights of property transferable or vested in such assignee unless brought within two years from

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[4] The Harrisburg, 119 U. S. 199 (1886); Stern v. La Compagnie G. T., 110 Fed. Rep. 996 (1901); Radezky v. Sargent & Co., 77 Conn. 110 (1904); Elliot v. Canal Co., 25 Ind. App. 592 (1900); Rodman v. Ry Co., 65 Kan. 645 (1902); McRae v. N. Y., N. H. & H. R. R., 199 Mass. 418 (1908); Neganbauer v. Great Northern Ry. Co., 92 Minn. 184 (1904); Hill v. Supervisors, 119 N. Y. 344 (1890); Best v. Kinston, 106 N. C. 205 (1890); Martin v. Pittsburgh Ry. Co., 227 Pa. 19 (1910); Lambert v. Ensign Mfg. Co., 42 W. Va. 813 (1896). *Contra,* Kaiser v. Kaiser, 16 Hun. 602 (N. Y. 1879).

[5] Johnston v. Shaw, 21 Sc. L. R. 246 (Scotland, 1883).

[6] 105 U. S. 640 (1881).

[7] Revised Statutes of United States, §5057.

the time when the cause of action accrued for or against such assignee." This case would seem to be an authority for the decision of the principal case, but upon investigation it will be found to have been based wholly upon *Bailey* v. *Glover*,[8] which merely held that fraud until discovered, would prevent the operation of a similar statute, and the court expressly stated that they did not consider the statute of limitations as a part of the bankruptcy act. Under this view the limiting statute could not be a condition precedent unless specifically stated to be such, consequently the case could not be deemed a precedent for the principal case.

T. S. P.

FALSE IMPRISONMENT—IS THE REFUSAL TO AID THE EQUIVALENT OF DETENTION?—A very interesting question in the law of false imprisonment arose in a recent case decided by the Court of Appeal of England.[1] The plaintiff, a coal miner, went down on a shift at about 9.30 in the morning for the purpose of working for the defendants, his employers. The shift was for a period of seven hours. When he had reached the bottom of the mine he was ordered by his employers to do certain work, and he wrongfully refused to do it. He requested to be taken to the surface again; but by the order of his employers, he was not allowed to use the shaft elevator (which was the only means of reaching the surface) until 1.30 o'clock. He brought an action for damages for false imprisonment in respect of his detention. Lord Justices Buckley and Hamilton held that the fact that the defendant did not grant the plaintiff the facility for coming up to the surface did not constitute a false imprisonment. Hamilton, L. J., said that he would not go into the question of whether it was or was not an implied term of the contract that the employers should furnish the means of getting to the surface at any time, for even if there was such term, the remedy for non-compliance would be an action for breach of contract, and it could not, merely because the plaintiff was detained, be construed into the commission of a tort. Lord Justice Vaughan Williams, dissenting, thought there was an unlawful imprisonment.

It is obvious that there is room for difference of opinion upon the question; but to the mind of the writer the dissenting opinion is the more reasonable view.

One may refer to the definition of Thorpe, C. J., in Year Book of Assizes,[2] that a person is said to be imprisoned "in any case where he is arrested by force and against his will, although it be on the high street or elsewhere, and not in a house"; or to Sir Wm. Black-

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[8] 21 Wall. 342 (U. S. 1874).

[1] Herd v. Weardale Steel Co., Ltd., *et al.*, 109 L. T. 457 (Eng. 1913).

[2] Fol. 104, plac. 85 (1348).